

**A SUBSTITUTE RESOLUTION BY  
TRANSPORTATION COMMITTEE**

**09-R-1728**

**A SUBSTITUTE RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ACTUAL COST UTILITY AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE GEORGIA DEPARTMENT OF TRANSPORTATION TO RELOCATE ALL TRAFFIC SIGNAL EQUIPMENT ALONG STATE ROUTE 139 BETWEEN GORDON PLACE, S.W. AND FLORIDA AVENUE, S.W. FOR PROJECT CSSFT-0008-00(277), P.I. NO. 0008277; SAFETY ACTION PLAN UTILITY RELOCATIONS, AT NO COST TO THE CITY; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City") has represented to the Georgia Department of Transportation ("GDOT") a desire to make traffic signal facilities adjustments for highway improvement construction; and

**WHEREAS**, the City has represented to GDOT a desire to remove and relocate facilities in conflict with highway construction for Project Number CSSTP-0008-00(277); and

**WHEREAS**, GDOT has expressed a willingness to provide the funding for the traffic signal facilities adjustments with funds of GDOT and funds appropriated to GDOT by the Federal Highway Administration, under Title 23, Highways, of the Code of Federal Regulations, or a combination of funds from the above; and

**WHEREAS**, GDOT has expressed a willingness to participate by funding one hundred percent (100%) of the construction of the project as set forth in "Exhibit A" of the Agreement for this project; and

**WHEREAS**, this project has been fully funded prior to the execution of contracts for construction, as well as to receive full reimbursement from the Georgia Department of Transportation.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA**, that the Mayor is authorized to execute an Actual Cost Utility Agreement with the Georgia Department of Transportation to relocate all traffic signal equipment along State Route 139 between Gordon Place, S.W. and Florida Avenue, S.W.

**BE IT FURTHER RESOLVED**, that the City Attorney is directed to prepare an appropriate Agreement for execution by the Mayor.

**BE IT FURTHER RESOLVED**, that this Agreement will not become binding upon the City and the City will incur no liability or obligation under it until same has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to the Georgia Department of Transportation.

**BE IT FINALLY RESOLVED,** that all contracted work will be charged to and paid from 2501 (Intergovernmental Grant Fund) 130308 (DPW Transportation Design) 4270000 (Traffic Engineering) and PTAE0 Funding Source: 13102242 1\*\* 2501\*\*\*\*\* 5414002 COA.

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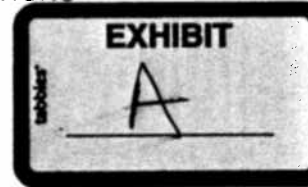
**WHEREAS**, invoices submitted by the designated contractors will be paid by GDOT directly.

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GEORGIA PROJECT: CSSFT-0008-00(277), Fulton County  
G.D.O.T. P.I.: 0008277



THIS AGREEMENT, made this \_\_\_\_\_, by and between the Department of Transportation, an agency of the State of Georgia, hereinafter called the DEPARTMENT, first party, and City of Atlanta, hereinafter called the COMPANY, second party.

WHEREAS, the DEPARTMENT proposes under the above numbered project to relocate utility facilities away from the travel way of State Route 139 from Gordon Place to Florida Avenue in Fulton County, Georgia with its funds or with funds apportioned to the State by the Federal Highway Administration under Title 23, Highways, of the Code of Federal Regulations (CFR); and

WHEREAS, the COMPANY has existing facilities located upon or over State Route 139 from Gordon Place to Florida Avenue in Fulton County, and will relocate its designated facilities to such area(s) as determined satisfactory by the DEPARTMENT and the Company. The COMPANY shall apply for and obtain written approval from the DEPARTMENT for all such relocations through a Utility Permit submitted directly to the DEPARTMENT'S State Utilities Office.

WHEREAS, due to the scope of this project is to move facilities of COMPANY from the travel way, it will become necessary to relocate and make certain adjustments of the existing facilities of the COMPANY in accordance with the detailed cost estimate for **\$457,985.00**, prepared by the COMPANY, attached hereto and made a part of this Agreement. The DEPARTMENT shall bear **100% or \$457,985.00**, and the COMPANY shall bear **0% or \$0.00**; and

WHEREAS, the location of said presently existing facilities and the proposed new location of such facilities will be shown on Utility Relocation Plan Package submitted and approved by the COMPANY and approved by the DEPARTMENT for this project; a copy of said Utility Relocation Plan Package in pertinent part will be attached hereto, it is desired that the COMPANY adjust its facilities within the existing right of way or move to the new location as shown on said Utility Relocation Plan Package and relinquish any existing easement rights as it may have on the present location for its existing facilities and accept in lieu thereof the easement rights hereinafter stated.

NOW THEREFORE, the PARTIES HERETO, each in consideration of the premises above and covenants of the other as hereinafter expressed and contained, do hereby contract and agree each with the other as follows:

1. It is specifically understood that the project number shown above is for the DEPARTMENT'S identification purposes only and may be subject to change by the DEPARTMENT. In the event it becomes necessary for the DEPARTMENT to assign a different project number, the DEPARTMENT shall notify the COMPANY of the new project designation. Such change in project designation shall have no effect whatsoever on any of the other terms of

this Agreement.

2. The COMPANY retains fully adequate right of ingress and egress to COMPANY facilities which is the subject of the project contemplated herein.

3. The COMPANY retains the right to operate and maintain existing facilities and to install, operate and maintain new facilities as required, except the future installation, operation and maintenance of the COMPANY'S facilities within the state right of way shall be in accord with the current edition of the Utility Accommodation Policy and Standards Manual issued by the DEPARTMENT and Title 23 of the CFR, Chapter I, Subchapter G, Part 645, Subparts A and B.

4. The COMPANY, with its regular construction or maintenance crews and personnel, and at its standard schedule of wages and working hours, and working in accord with the terms of its agreements with such employees, shall make such changes to its facilities as necessary by relocating such facilities away from the travel way as described in previous articles of this Agreement. The COMPANY may, at its option, contract any portion of the work contemplated subject to prior approval according to the terms and conditions contained in Title 23 of the CFR, Chapter I, Subchapter G, Part 645, Subparts A and B. The COMPANY agrees to obtain prior approval from the DEPARTMENT before authorizing any contract engineering or construction work by third parties, except as may be shown in the detailed cost estimate attached hereto.

5. The COMPANY may submit to the DEPARTMENT monthly bills for the eligible cost of the work as done by the COMPANY during the current month and will submit one final and complete billing of all eligible costs when the work has been completed. If the total amount billed under this Agreement exceeds eighty percent of the amount of the Agreement (including any approved change orders), the progress bill must include an itemized statement of charges. Said bills shall be prepared on the basis of the aforesaid Title 23 of the CFR, Chapter I, Subchapter G, Part 645, Subparts A and B.

6. The DEPARTMENT shall pay monthly bills promptly upon receipt and verification thereof by the DEPARTMENT. Upon completion of the work the COMPANY shall submit one final bill to the DEPARTMENT and the DEPARTMENT shall make a conditional final payment promptly upon verification of the final bill by the DEPARTMENT. The total liability of the DEPARTMENT shall not exceed the reimbursable cost of the work as ascertained by computing the items of cost as set forth in the aforesaid Title 23 of the CFR, Chapter I, Subchapter G, Part 645, Subparts A and B. At any time within three (3) years after the date of the conditional final payment the DEPARTMENT may audit the cost records and accounts of the COMPANY pertaining to this project and will bill the COMPANY any amount of any unallowable expenditure made in the conditional final payment of this Agreement or, if no unallowable expenditure is found, notify the COMPANY of that fact in writing. If the COMPANY does not pay any such bill within thirty (30) days of receipt of the bill from the DEPARTMENT, the DEPARTMENT may set-off the amount of such bill against the amounts owed the COMPANY on any then-current agreement between the COMPANY and the DEPARTMENT. For audit purposes, the cost records and accounts of the COMPANY pertaining to this project shall be made available to the representatives of the DEPARTMENT or

## ACTUAL COST UTILITY AGREEMENT – SAFETY ACTION PLAN UTILITY RELOCATIONS

the Federal Highway Administration at the General Office of the COMPANY during the progress of the work and for a period of not less than three (3) years from the date conditional final payment has been received by the COMPANY.

7. The COMPANY expressly agrees that the DEPARTMENT may set-off against the net payments provided for herein an amount equal to that amount which has been identified by either a State or Federal audit as unallowable expenditure in any agreement between the COMPANY and the DEPARTMENT on which a conditional final payment has been made.

8. The DEPARTMENT shall not be bound to pay any amount in excess of the reimbursable portion of the detailed cost estimate attached hereto, nor for any items of work not provided for in the detailed cost estimate. In the event it is determined that a change in the work to be performed by the COMPANY shall be required or that an increase in cost anticipated will be incurred by the COMPANY, a written change or extra work order approved by the DEPARTMENT will be required as provided in Title 23 of the CFR, Chapter I, Subchapter G, Part 645, Subparts A and B. The amount of the detailed cost estimate attached hereto will be allotted from available funds and written notice given to the COMPANY by the DEPARTMENT before the COMPANY is authorized to proceed with the work to be performed by the COMPANY under this Agreement.

9. The DEPARTMENT shall not be liable for payment of any bill received more than twelve (12) months after all work under this Agreement is completed unless the COMPANY and DEPARTMENT have agreed in advance to an extension of the billing period in writing. Unless an extension of the billing period has been agreed, the DEPARTMENT may consider payment made up to one year following completion of the work to be final.

10. It is mutually agreed that the final cost of the changes in the facilities of the COMPANY covered by the detailed cost estimate shall be borne by the COMPANY and the DEPARTMENT on the percentage basis indicated in said estimate.

11. The COMPANY shall be responsible for providing signing and other traffic control measures during construction in accordance with the Manual on Uniform Traffic Control Devices, current edition, and as required by the DEPARTMENT'S engineer.

12. The DEPARTMENT agrees to notify the COMPANY when Authorization is granted and will provide a notice to proceed in writing to begin work. The COMPANY agrees to coordinate with the DEPARTMENT'S Area Office a schedule of operations which will minimize impacts to traffic. Special Provisions regarding such schedule of operations and a Utility Adjustment Schedule shall be included and set forth in the Approved Utility Relocation Plan Package attached hereto.

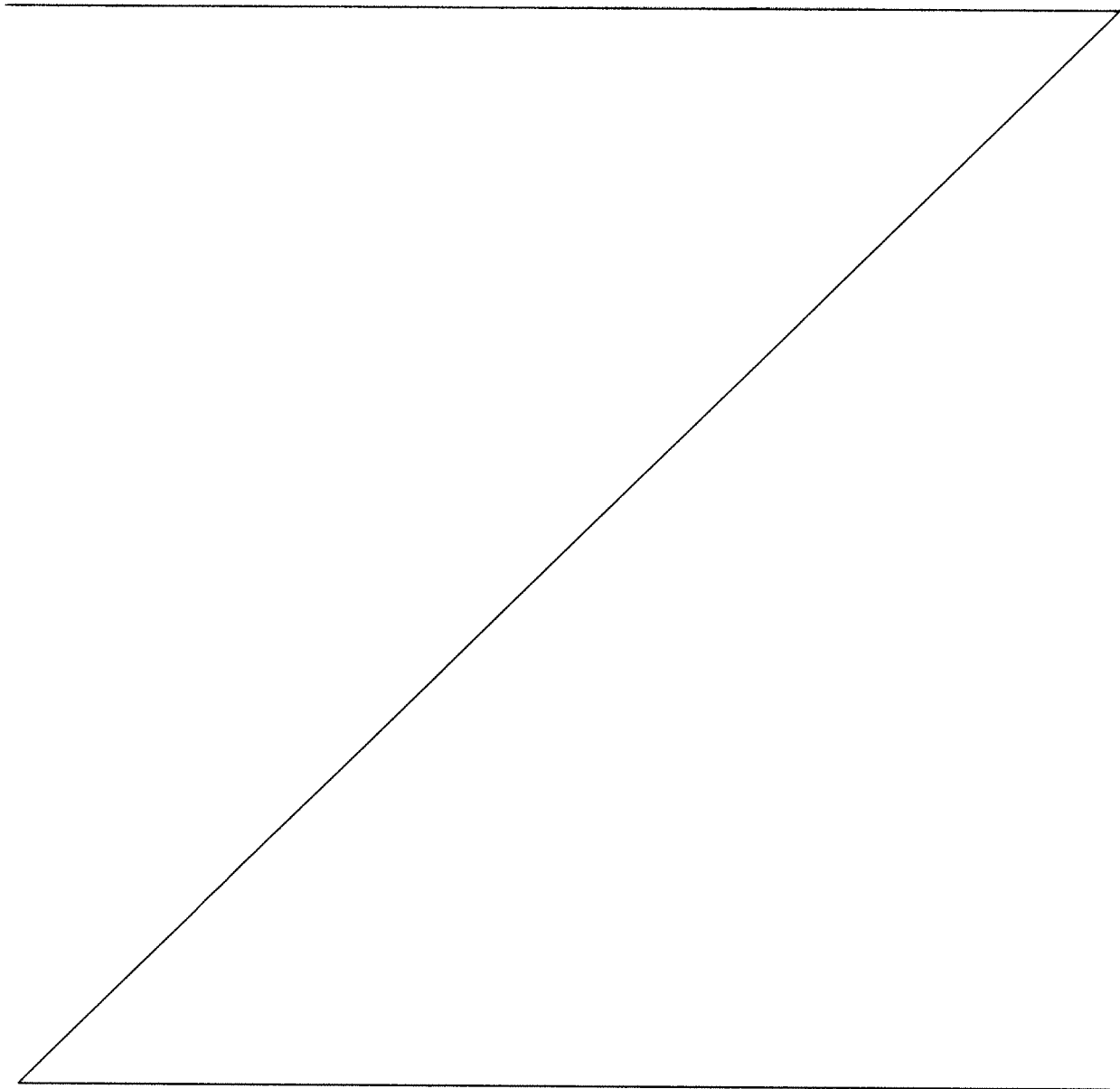
13. The COMPANY agrees to begin work within 30 days once given a notice to proceed in writing by the DEPARTMENT, weather and circumstances permitting. The COMPANY shall complete the work as per the schedule of operations and the Utility Adjustment Schedule referenced in Article 12 above. If the COMPANY fails to begin or complete said work at the agreed time schedule, weather and circumstances permitting, the

ACTUAL COST UTILITY AGREEMENT – SAFETY ACTION PLAN UTILITY RELOCATIONS

DEPARTMENT retains the right to withhold the DEPARTMENT'S share of the funding as referenced previously in this agreement. If continued failure to complete the work by the COMPANY the DEPARTMENT reserves the right to withhold permits on the COMPANY throughout this corridor until said work is completed.

14. It is mutually agreed between the parties hereto that this document shall be deemed to have been executed in the City of Atlanta, Georgia and that all questions of interpretation and construction shall be governed by the laws of the State of Georgia.

15. The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.



ACTUAL COST UTILITY AGREEMENT - SAFETY ACTION PLAN UTILITY RELOCATIONS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three counterparts, each to be considered as an original by their authorized representative the day and date hereinabove written.

WITNESS AS TO SECOND PARTY:

CITY OF ATLANTA

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
NOTARY PUBLIC (SEAL)

BY: \_\_\_\_\_  
TITLE

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_\_  
My commission expires:

I attest to the genuineness of the COMPANY Seal and I further attest that the above named Officer is duly authorized to execute this document.

ATTEST:

\*\*\*\*\*

FEIN \_\_\_\_\_  
\*\*\*\*\*

BY: \_\_\_\_\_  
SECRETARY/ASST. SECRETARY  
(OFFICIAL SEAL)

RECOMMENDED:

ACCEPTED:  
DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
STATE UTILITIES ENGINEER

BY: \_\_\_\_\_  
COMMISSIONER

PROJECT: CSSFT-0008-00(277)  
COUNTY: FULTON  
G.D.O.T. P.I. NO: 0008277  
DATE: September 28, 2009

I attest that the seal imprinted herein is the Official Seal of the DEPARTMENT.

BY: \_\_\_\_\_  
TREASURER  
(OFFICIAL CUSTODIAN OF THE SEAL)



**Part II: Legislative White Paper:** (This portion of the Legislative Request Form will be shared with City Council members and staff)

**B. To be completed by the department:**

**1. Please provide a summary of the purpose of this legislation (Justification Statement).**

The purpose of this legislation is to relocate all traffic signal equipment that is too close to the roadway (poles, controller/ cabinet, communication cables, etc.) on State Route 139 (MLK Dr., Ralph David Abernathy Road, and Cascade Road).

**2. Please provide background information regarding this legislation.**

We are required under GDOT roadside safety program to relocate all immovable objects (non-break away poles, signal equipment, etc.) six feet from the roadway. GDOT will fully fund this project, however, the City is responsible to secure and pay for the contract work before seeking reimbursement from GDOT.

**3. If Applicable/Known:**

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection:**

**(c) Bids/Proposals Due:**

**(d) Invitations Issued:**

**(e) Number of Bids:**

**(f) Proposals Received:**

**(g) Bidders/Proponents:**

**(h) Term of Contract:**

**4. Fund Account Center:**

**5. Source of Funds:**

**6. Fiscal Impact:**

**7. Method of Cost Recovery:**

**This Legislative Request Form Was Prepared By: Soraya Belgrave**

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Soraya Belgrave

Contact Number: (404) 330-6002

Originating Department: Department of Public Works

Committee(s) of Purview: [REDACTED]

Chief of Staff Deadline: September 29, 2009

Anticipated Committee Meeting Date(s): October 13, 2009

Anticipated Full Council Date: October 19, 2009

Legislative Counsel's Signature: Saul Schultz

Commissioner Signature: \_\_\_\_\_

Chief Procurement Officer Signature: \_\_\_\_\_

**CAPTION**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ACTUAL COST UTILITY AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE GEORGIA DEPARTMENT OF TRANSPORTATION TO RELOCATE ALL TRAFFIC SIGNAL EQUIPMENT ALONG STATE ROUTE 139 BETWEEN GORDON PLACE, S.W. AND FLORIDA AVENUE, S.W. FOR PROJECT # CSSFT-0008-00(277), SAFETY ACTION PLAN UTILITY RELOCATIONS, AT NO COST TO THE CITY; AND FOR OTHER PURPOSES.**

Mayor's Staff Only  
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Received by CPO: \_\_\_\_\_ Received by LC from CPO: \_\_\_\_\_  
(date) 9/30/09 (date)

Received by Mayor's Office: \_\_\_\_\_ Reviewed by: \_\_\_\_\_  
(date) (date)

Submitted to Council: \_\_\_\_\_